

**KENTUCKY PERSONNEL BOARD
MINUTES OF JANUARY 9, 2009**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Vice Chair Robert B. Frazer on January 9, 2009, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Robert B. Frazer, Vice-Chair
Betty Gibson, Member
M. Suzanne Cassidy, Member
Julie True, Member
Larry Gillis, Member
John Dunaway, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board personnel absent:

Christine J. Goodmann, Chair

The first order of business was to swear in the newest Board members Mr. John Dunaway, appointed by Governor Steven Beshear, and Mr. Larry Gillis, Merit Employee Member appointed by the Board to complete the term vacated by former Chairman Greg Higgins. They were sworn in by General Counsel Boyce A. Crocker and welcomed by Vice Chair Robert Frazer.

2. **READING OF THE MINUTES OF REGULAR MEETING HELD DECEMBER 12, 2008**

The minutes of the last Board meeting had been previously circulated among the members. Vice Chair Frazer asked for additions or corrections. Mr. Gillis noted one clerical correction. Ms. True moved to approve the minutes, with clerical correction. Ms. Cassidy seconded, and the motion carried 6-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT:**

Mr. Sipek welcomed the two newest Board Members, Mr. Larry Gillis and Mr. John Dunaway.

Due to all the holidays, Mr. Sipek noted that there was a light agenda.

Mr. Sipek advised that Mr. Crocker had attended the Kentucky Employees Mediation Program to be a mediator. Mr. Sipek stated that, having gone through the program himself, valuable skills are learned and he looked forward to Mr. Crocker using those skills.

He also welcomed two guests, Mr. Bill Ryan, Governor's Employee Advisory Council, and Ms. Linda Patrick, Mediation Program.

At the conclusion of Mr. Sipek's report, Vice-Chair Frazer called for the Personnel Cabinet's Report.

4. **PERSONNEL CABINET'S REPORT:**

Hon. Dinah Bevington, Acting Executive Director for Office of Legal Services, was present for the Personnel Cabinet and reported the following:

A. 101 KAR 2:066E and 101 KAR 2:066 Veterans' Preference Regulation (Emergency)

Ms. Bevington advised that the emergency regulation was previously submitted to the Board at its July 2008 Meeting. The Cabinet deferred it until now, due to pending legislation. Now that the legislation has been filed, the emergency regulation reflects what is in the legislation. No changes have been made from what was previously reviewed by the Board in July, except it repeats the tested position language that is in the statute, so that no conflict exists between the statute and the regulation. Ms. Bevington asked the Board members if they had any questions. Mr. Sipek asked if there were currently any positions requiring testing. Ms. Bevington stated that at this point they do not use testing, but may in the future. This emergency regulation is needed immediately because the Personnel Cabinet needs to award Veterans' preference at this point in time for every untested position, which is every position. Mr. Sipek asked if she had any feedback from state agencies how the process is working. Ms. Bevington stated that all the agencies have been utilizing this regulation since July. As soon as it is filed with LRC it will become effective. Ms. Bevington stated that there is mixed feedback, because the agencies feel that they should be able to choose the most qualified candidate and not told who they have to interview. The Legislature believes this regulation is appropriate and the Personnel Cabinet is making sure that the agencies are complying. Conversely, veterans have been thankful and just want the opportunity to sell themselves and to be considered. Ms. Bevington stated that it is difficult for the agencies to relate military experience to state experience. Ms. Bevington stated that they are working diligently to educate the agencies,

KDVA, and Veterans as to what opportunities are available to them. Mr. Franz, part of KDVA, was the liaison to assist Veterans until he resigned. In 2008, Mr. Franz assisted 1,957 Veterans. The Cabinet is working with KDVA to provide a new liaison.

Mr. Crocker asked Ms. Bevington to explain the difference between an emergency regulation and an amendment. Due to an immediate need, an emergency regulation is filed first, with the intent to replace with an ordinary regulation [which becomes effective after it is reviewed by the Administrative Regulation Review Subcommittee, which can take up to three months]. Both regulations are the same, except the emergency regulation has an “E” after it, and are filed with LRC at the same time.

Mr. Gillis asked if this was the same language as Representative Cherry’s bill, which did not pass last year, and whether it could be passed separate from the bill. Ms. Bevington stated that it could be.

Mr. Frazer asked if the agencies utilized the computer to get the names for the positions. Ms. Bevington stated that the agencies will post the position for ten days. After the ten days are up the agency will request a register (now called a requisition) of all the qualified candidates from the Personnel Cabinet. The candidates with Veteran’s preference will be noted on the register. Mr. Frazer asked if there were a motion.

Ms. Gibson moved to approve the emergency Veterans Preference regulation (101 KAR 2:066E) and the amendment (101 KAR 2:066). Ms. Cassidy seconded and the motion carried 6-0.

Ms. Bevington gave a year-end 2008 review of the Personnel Cabinet:

- In January 2008, the Cabinet had 480 walk-ins and in December 2008 the Cabinet had 102 walk-ins (an average of 150 daily to 8 daily)
- Phone calls with questions, from 100 per hour to 7 per hour
- In 2008 there were 51,410 new applications, which include current employees and new candidates. All the applications are reviewed by the Personnel Cabinet, Division of Career Opportunities, to make sure the applicants are qualified for the positions they are seeking. The Personnel Cabinet also conducts a background check for each appointment.
- 168,295 job submissions for 2008.

Ms. Bevington stated that Career Opportunities has been a success and hopes that the Kentucky Human Resources Information System (KHRIS) is as successful, which is set to go live March 31, 2008. Pilot training begins today. There are a few FMLA changes, on which the Department of Labor has given the Cabinet some clarification. The Personnel Cabinet will be the “frontrunner” of informing the agencies of the changes. The Personnel Cabinet has created the Human Resource Leadership Consortium (HRLC), a group of individuals from all cabinets and agencies, that meets regularly to provide guidance and feedback on human resource issues, one issue will be the FMLA changes which will be effective January 16, 2009.

Mr. Crocker asked about the furlough legislation. Ms. Bevington stated that the furlough legislation has been included in the budget bill. She did not know if it had been “dropped.” She further stated that Governor Beshear had issued a memo to all state employees discussing the furlough. She stated that the Cabinet is involved with the furlough process and will make sure each agency complies with the mandatory furlough, which is not effective until approved by the Legislature.

Ms. True asked if employees are furloughed, can they buy time to make up for retirement. Ms. Bevington stated that there is a buy-back provision in the legislation; however, a three-day furlough (which the Cabinet is looking at now) will not impact employees’ retirement. Ms. True asked if it will involve all employees, including Cabinet Secretaries. Ms. Bevington advised that it would include all merit and non-merit employees in the Executive Branch.

At the conclusion of Ms. Bevington’s report, Vice-Chair Frazer asked the parties to come forward for the petitioned position.

5. PETITIONED POSITION

A. Kentucky State Police – Staff Assistant

Present was Lt. Colonel Mitch Bailey with the Kentucky State Police. Mr. Bailey stated that in August 2008 an Executive Order was issued merging the Kentucky State Police and Kentucky Vehicle Enforcement. Lt. Bailey advised that the Staff Assistant position was a non-merit position. Mr. Sipek asked if there was any reason the position could not be performed by a merit employee. Lt. Bailey replied that the Deputy Commissioner of Kentucky Vehicle Enforcement, Mr. David Leddy, who currently holds the position, has institutional knowledge and will be filling the Staff Assistant position. Due to the Cabinet’s reorganization, Mr. Leddy’s position was abolished. Mr. Bailey advised that there is a cost savings in salary and that Mr. Leddy’s salary will be reduced from Deputy Commissioner at \$78,000 to Staff Assistant at \$60,000.

Ms. Cassidy moved to approve the petitioned position (Staff Assistant). Ms. True seconded and the motion carried 6-0.

6. ORAL ARGUMENTS:

A. ~~Greg Jennings v. Public Protection Cabinet~~ (Settled)

B. Gary Parrott v. Transportation Cabinet (Request by Appellee)

Present were counsel for Appellant, the Hon. Scott Miller, and counsel for Appellee, the Hon. Will Fogle. The parties answered questions from the Board.

C. Shirley Robbins v. Department of Veterans Affairs (Moved to March)

7. **MOTIONS**

A. Shirley Robbins v. Department of Veterans Affairs

--Appellee's Motion to Strike Appellant's Exceptions and Request for Oral Argument as untimely

--Appellant's response to Motion to Reject Exceptions

No parties were present. Mr. Sipek explained that the parties were scheduled for oral argument today but due to scheduling conflicts it was moved to March. However, counsel for Appellant filed Exceptions and Request for Oral Argument and counsel for Appellee filed a Motion to Strike Appellant's Exceptions because it was untimely. Basically, after a Hearing Officer's recommended order is issued the parties have fifteen (15) days to file exceptions. The Recommended Order is dated December 11, 2008, and the Exceptions and Request for Oral Argument are dated December 29, 2008, some eighteen (18) days later. Counsel for Appellant in his response stated that December 29, 2008, was the first business day after the holidays. Mr. Sipek stated that the Board's practice is to accept them on the next business day. In this instance, Friday, December 26, 2008, was a state holiday and the offices were closed; therefore, the next business day for any exceptions to be filed would be Monday, December 29. Ms. Cassidy stated that she believed they were timely filed. Vice-Chair Frazer asked for a motion.

Ms. Cassidy moved to accept Appellant's Exceptions and Request for Oral Argument as timely. Ms. True seconded and the motion carried 6-0.

8. **CLOSED SESSION:**

Ms. Gibson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Gillis seconded. Vice Chair Frazer stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (10:30 a.m.)

Ms. Gibson moved to return to open session. Ms. Cassidy seconded and the motion carried 6-0. (11:05 a.m.)

9. CASES TO BE DECIDED:

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. ~~Greg Jennings v. Public Protection Cabinet~~ (Settled)

B. Gary Parrott v. Transportation Cabinet

Ms. Cassidy moved to note Appellee's exceptions, Appellant's response, and oral arguments and to accept the recommended order sustaining the appeal to the extent a 5-day suspension was reduced to a three-day suspension. Ms. Gibson seconded and the motion carried 6-0.

C. ~~Shirley Robbins v. Department of Veterans Affairs~~ (Moved to March meeting)

D. Mark Smith v. Energy and Environment Cabinet and Ronald Matar
Deferred from December Meeting

Ms. Gibson moved to note Appellee's exceptions, Appellant's exceptions and response, and oral arguments and to accept the recommended order sustaining the appeal to the extent the promotion be set aside and redone. Mr. Dunaway seconded and the motion carried 5-1, with Mr. Frazer opposing.

E. James Mensing v. Justice and Public Safety Cabinet
Deferred from December Meeting

Ms. True moved to note Appellee's Exceptions and to accept the Final Order as altered and attached to these minutes dismissing the appeal. Mr. Gillis seconded and the motion carried 4-1 with Mr. Frazer opposing and Ms. Cassidy recusing.

F. Nancy Nusz, et al v. Education and Workforce Development Cabinet and Personnel Cabinet (7 appeals)
Deferred From November and December Meetings

Ms. Cassidy moved to note Appellees' Exceptions, Appellant's response, and oral arguments, and to accept the Final Order as altered and attached to these minutes sustaining the appeal. Ms. Gibson seconded and the motion carried 6-0.

G. Russell Caudill v. Tourism, Arts and Heritage Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 6-0.

H. Lowell Grubb v. Justice and Public Safety Cabinet

Mr. Gillis moved to defer this matter to the next Board meeting. Ms. Cassidy seconded and the motion carried 6-0.

I. ~~Vicky Wilson v. Cabinet for Health and Family Services~~ (Moved to February)

Show Cause Order – No Response Filed – Appeals Dismissed

The following case had a show cause order entered by the hearing officer recommending that the appeal be dismissed for failure to timely prosecute unless a statement was filed by the Appellant stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellant to the show cause order.

J. Danielle Elliston v. Justice and Public Safety Cabinet

Ms. Cassidy moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Ms. Gibson seconded and the motion carried 6-0.

10. **WITHDRAWALS:**

Ms. Gibson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. True seconded and the motion carried 6-0.

- A. Blaine Kohl v. Office of the Attorney General
- B. Barbara Litteral v. Personnel Cabinet
- C. Patricia Walker v. Cabinet for Health and Family Services
- D. Justin Prater v. Cabinet for Health and Family Services
- E. Suzanne Minnick v. Personnel Cabinet

11. **SETTLEMENTS:**

Mr. Dunaway moved to consider the following settlements and to accept the settlements as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Ms. True seconded and the motion carried 6-0.

- A. Gary Davis v. Public Protection Cabinet
- B. Connie Green v. Cabinet for Health and Family Services
- C. Tonya Horton v. Cabinet for Health and Family Services
- D. Greg Jennings v. Public Protection Cabinet

12. OTHER

Mr. Sipek stated that a change to the May 8, 2008 meeting date needed to be discussed. Mr. Sipek stated that he and Mr. Crocker plan to attend the Kentucky Association of Administrative Adjudicators' annual training which is scheduled for the same day. Mr. Sipek stated that both he and Mr. Crocker are members and that Mr. Crocker will be President of that organization next year. The Board decided to wait until Chair Goodman was present to discuss possible alternate dates. Vice-Chair Frazer stated that although he will not be at the February Board meeting he will provide his calendar. Ms. Gibson asked that a day be considered in the same week as May 8, maybe Monday, May 4.

Mr. Crocker advised Mr. Dunaway and Ms. True that the Senate will need to confirm their appointments to the Board. Therefore, they may be asked to appear before the Senate to be confirmed. Mr. Crocker stated that they will be advised by someone in the Senate Leadership Office, perhaps Mr. Jason Hall who works for Senate President David Williams.

There being no further business, Ms. Gibson moved to adjourn. Ms. Cassidy seconded and the motion carried 6-0. (11:15 a.m.)

Christine J. Goodmann, Chair

Robert B. Frazer, Vice-Chair

Betty Gibson, Member

Suzanne Cassidy, Member

Julie True, Member

Larry Gillis, Member

John Dunaway, Member